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Guidance Letter 11-001

Date: June 17, 2011

To: All County Assessors and All County Treasurers

From: Terry E. Rubald, Chief, Division of Assessment Standards

CC: Christopher G. Nielsen, Interim Executive Director, Department of Taxation
Tom Gransbery, Supervisor, Local Government Finance

Subject: **Treatment of certain underground water basin assessments; billing for special assessment using an allocation factor.**

SUMMARY: This letter provides guidance with regard to special assessments for underground water basins. Prior to passage of AB 46 (effective May 24, 2011), the levy for underground water basins was included for some entities in the combined property tax rate and was thus subject to abatements pursuant to NRS 361.4722 and 361.4723. Due to the change enacted by AB 46, "ad valorem taxes" does not include any assessments levied pursuant to NRS 533.190, 533.285, or 534.040. The underground water basin assessment is considered to be a special assessment, separately calculated, that is not subject to any calculation of abatement of taxes. The rate used to calculate the special assessment is not part of the combined tax rate.

AUTHORITY FOR THE LEVY:

NRS 533.190 Costs: Assessment by court; entry of charges on assessment roll; collection and disposition of money.

1. At any time in the course of the hearings, the court may, in its discretion, by order assess and adjudge against any party such costs as it deems just and equitable or may so assess the costs in proportion to the amount of water right standing allotted at that time, or the court may assess and adjudge such costs and expenses in its final judgment upon the signing, entry and filing of its formal findings of fact, conclusions of law and decree adjudicating the water rights against any party as it deems just and equitable, or may so assess the costs in proportion to the amount of water right allotted and decreed in the final judgment.

2. After the making, entry and filing by the court of the first findings of fact, conclusions of law and decree made, entered and filed by the court in any such water adjudication as distinguished from the first proposed findings of fact, conclusions of law and decree, the court shall assess all costs and expenses against the loser or losers, in any and all subsequent proceedings in any such water adjudication.

3. If costs are assessed or allowed as provided for in this section and in NRS 533.170 and allotted, the State Engineer, within 60 days after such filing and entry, as above described, shall certify to the boards of county commissioners of the respective counties wherein the stream system is situate either the amount of acreage set forth in the order of determination to which water has been allotted, or the respective water rights against which such costs have been assessed by the court, and

the charges against each water user in accordance with the court's judgment and allocation of costs. Upon receipt of the certificate from the State Engineer by the board of county commissioners, the board of county commissioners shall certify the respective charges contained therein to the county assessor of the county in which the land or property served is situated. The county assessor shall enter the amount of the charge on the assessment roll against the claimant's property or acreage served.

4. The proper officer of the county shall collect the assessment as other assessments are levied and collected, and the assessment is a lien upon the property so served and must be collected in the same manner as other assessments are collected, but such costs must be collected in equal installments over 2 fiscal years.

NRS 533.285 Entry on assessment roll of charges in budget; collection of special assessment.

1. Upon receipt of such budget by the board of county commissioners, the board of county commissioners shall certify the respective charges contained therein to the county assessor. The county assessor shall enter the amount of the charge or charges on the assessment roll against the claimants and the property or acreage served.

2. The proper officers of the county shall collect the special assessment as other special assessments are levied and collected, and the assessment is a lien upon the property so served and must be collected in the same manner as other assessments are collected.

[Part 52:140:1913; A 1915, 378; 1919, 384; 1921, 171; 1931, 357; 1945, 87; 1947, 518; 1951, 132]—(NRS A 1995, 221)

NRS 534.040 Employment and compensation of well supervisor and assistants; levy, collection and distribution of special assessment.

1. Upon the initiation of the administration of this chapter in any particular basin, and where the investigations of the State Engineer have shown the necessity for the supervision over the waters of that basin, the State Engineer may employ a well supervisor and other necessary assistants, who shall execute the duties as provided in this chapter under the direction of the State Engineer. The salaries of the well supervisor and the assistants of the well supervisor must be fixed by the State Engineer. The well supervisor and assistants are exempt from the provisions of chapter 284 of NRS.

2. The board of county commissioners shall levy a special assessment annually, or at such time as the assessment is needed, upon all taxable property situated within the confines of the area designated by the State Engineer to come under the provisions of this chapter in an amount as is necessary to pay those salaries, together with necessary expenses, including the compensation and other expenses of the Well Drillers' Advisory Board if the money available from the license fees provided for in NRS 534.140 is not sufficient to pay those costs. In designated areas within which the use of groundwater is predominantly for agricultural purposes the levy must be charged against each water user who has a permit to appropriate water or a perfected water right, and the charge against each water user must be based upon the proportion which his or her water right bears to the aggregate water rights in the designated area. The minimum charge is \$1.

3. The salaries and expenses may be paid by the State Engineer from the Water Distribution Revolving Account pending the levy and collection of the assessment as provided in this section.

4. The proper officers of the county shall levy and collect the special assessment as other special assessments are levied and collected, and the assessment is a lien upon the property.

APPLICATION:

1. A special assessment can be made as a result of the costs of adjudication of water rights entered by a judge (NRS 533.190); as the result of a budget prepared by the State Water Engineer to provide for the expenses of the stream system or water district (NRS 533.285); or to pay the salaries and necessary expenses of well supervisors, necessary assistants and the Well Drillers' Advisory Board if the money available from license fees is insufficient (NRS 534.040).
2. Each October, the State Water Engineer provides each county the total amount required to be specially assessed as a result of the expenses listed in (1).
3. In those water districts where the agricultural use of water is greater than 50%, the assessment is charged against each water user who has a permit, and is based on the proportion which the individual water right bears to the aggregate water rights. This is based on the State Engineer's interpretation of the word "predominantly" as it is used in NRS 534.140(2).

4. In those water districts where the agricultural use is 50% or less, the assessment is "levied" upon all "taxable property" within the boundaries of the water district. "Taxable property" is defined in NRS 361.045:

"except as otherwise provided by law, all property of every kind and nature whatever within this state shall be subject to taxation."

In a property tax application, "except as otherwise provided by law" is a reference to all of the exemptions from property taxes that are allowed in NRS 361.050 through 361.187.

However, both NRS 533.190 and NRS 533.285 clearly reference that charges are to be applied to the "claimant's property and the acreage served." Property which might otherwise be exempt for property tax purposes may still qualify as "acreage served" for purposes of the water district special assessment. Thus, exemptions from property taxes are not exemptions from water district special assessments. This is further supported by the passage of AB 46 in which the Legislature made clear that water district special assessments are not ad valorem taxes and are not subject to abatements of property taxes. Until NRS 533.190, 533.285 and 534.040 are clarified by regulation, the Department recommends that all property which qualifies as "acreage served" within the water district for 2011-2012 is subject to the special assessment, without regard to whether the property is otherwise exempt for property tax purposes.

5. For at least 18 years, several of the larger communities where municipal use constitutes 50% or more of the total use have allocated the special assessment by applying a rate to the assessed value of each property within the water district. The rate was calculated by dividing the total special assessment by the total assessed value of the water district. It was treated like a tax rate and included in the combined tax rate. The result was that each property was charged a portion of the total special assessment based on the proportion of the property's assessed value to the total assessed value of the district. It is unclear whether allocation of the water district charges on the basis of assessed value is consistent with the allocation used in areas where the agricultural use is greater than 50% and thus allocated on the basis of water permits; whether it even reflects "acreage served," the proportion of water rights of each property to the whole, or the amount of water use. Undoubtedly this should be resolved by regulation.

Until regulations are adopted which clarify the basis for allocation of the special assessment, however, and for the urgent purposes of preparing tax bills and special assessments in July for the 2011-2012 year, the Department recommends that allocation of the special assessment continue to be calculated as a rate against assessed value. This is supported not only by the use of the terms "levy" and "taxable value" found in NRS 534.040(2), but also by AB 46, Section 3 which clarifies that the calculations for the special assessment must not be applied in a manner that affects the abatement calculations. This implies that the special assessment calculation is based on the formula for property taxes, which is "Rate" times "Assessed value" equals "tax," or in this case, "special assessment." The result of the calculation must not, however, be in any way abated pursuant to NRS 361.4722, 361.4723, or 361.4724.

6. For FY 2012 the Department will provide an "allocation" rate for those counties which previously allocated the special assessments using a rate times value formula. The rate may be found in a new section, Section E of the Redbook. The "allocation" rate was not included in Sections A,B, or D of the Redbook to avoid any confusion as to whether the rate

was included in the combined rate. The "allocation" rate is not included in the combined property tax rate.

7. For those counties that have paid the special assessment pursuant NRS 534.040(2) without relying on a "tax" rate, please continue to do so with no change for FY 2012. However, the Department will ask for regulations clarifying whether a special assessment can be treated as a general fund expense, the effect of which is to cause every taxpayer in the county to contribute to the special assessment of the water district.
8. The Department will also pursue regulatory clarification of the basis for allocation of the special assessment.

WEBSITE LOCATIONS:

Nevada Revised Statutes (NRS): <http://www.leg.state.nv.us/NRS/>

Nevada Administrative Code: <http://www.leg.state.nv.us/NAC/CHAPTERS.html>

Department of Taxation Guidance letters: <http://www.tax.state.nv.us>; then select "Publications;" then select Assessment Standards Publications and "Guidance letters."